

RETURN

(108a)

TO AN ORDER of the House of Commons, dated the 19th February, 1912, for a copy of all letters, petitions, memorials or other documents received by the Prime Minister or any other member of the Government relating to the passage of a federal marriage law or legislation in regard to the so called effect of the *Ne Temere* decree.

W. J. ROCHE,
Secretary of State.

OTTAWA, 22nd March, 1912.

P.C. 1114.

ULVERTON, QUE., May, 8, 1911.

To the Secretary of State,
Ottawa.

DEAR SIR,—The enclosed is a resolution of the Ministerial Association of Richmond County, Quebec, passed at their regular meeting, May 8, at Danville, Que., which I have been instructed to send to you and through you to the Government of Canada.

Respectfully,

R. C. McCONNELL,
Secretary.

Inasmuch as the Province of Quebec is a part of the British Empire and under British law, and inasmuch as British law provides that the Bishop of Rome has no jurisdiction in the said empire, and

Whereas a recent judgment in the courts of Quebec lends legal sanction to the position of the Roman Catholic Church enumerated in the *Ne Temere* decree of Pius X declaring that no marriage ceremony performed by a Protestant Minister between parties either of whom is or ever has been a member of the Roman Communion is a legal warrant of marriage.

Be it resolved that this association do most solemnly and indignantly protest against the above mentioned judgment as an infringement of British liberties, an insult to the Protestant citizens of His Majesty's realm and a serious menace to the moral health of the community.

Further, that inasmuch as article 127 of the Civil Code of the province of Quebec may by a certain interpretation be used to support such a judgment as the above, they as British subjects demand the immediate repeal of an article which by its breadth of expression lends any kind of sanction to so dangerous a position.

Further, they would also demand that the whole subject of marriage, its conditions and restrictions, be a matter dealt with by federal and not provincial legislation, as already pledged by the British North America Act of 1867.

2 GEORGE V., A. 1912

P.C. 1645.

THE DIOCESE OF SASKATCHEWAN,

SYNOD OFFICE,

PRINCE ALBERT, SASK., July 13, 1911.

SIR,—I have the honour by direction of the Synod of the Church of England in the Diocese of Saskatchewan to transmit the enclosed resolution passed by the said Synod, and to ask you to be good enough to lay the same before His Excellency the Governor General in Council.

I have the honour to be, Sir,
Your obedient servant,

JAMES TAYLOR.

The Hon. the Secretary of State for Canada,
Ottawa.

P.C. 14.

THE DIOCESE OF SASKATCHEWAN,

SYNOD OFFICE,

PRINCE ALBERT, SASK.

‘That this Synod protests against any assumption by the Church of Rome of the right to set aside the legality of marriages performed by clergy under sanction of the civil law.

‘That we demand protection from the Senate for those so married. That we learn on good authority ecclesiastics have cast doubt on the legality of the marriage of persons, one of whom is a Roman Catholic, and the marriage service was not performed by a Roman Catholic priest, steps be taken to secure the co-operation of those interested in this question in order to make provision for legal proceedings against any ecclesiastic, or other, using intimidation or casting such doubt.

‘That a copy of this resolution be sent to General Synod, and to the Premiers of the province and Dominion, and leaders of the opposition, and to the Secretary of State of Canada.’

Copy.

17 VICTORIA STREET,
LONDON, S.W., 16 December, 1911.

SIR,—I am directed to transmit, herewith, for such action as may be considered desirable, copy of a letter addressed to Lord Strathcona by the Evangelical Alliance, covering copies of Resolutions adopted at a Public Meeting held in London on the 15th *ultimo*, in reference to the *Ne Temere* decree.

I have the honour to be, Sir,
Your obedient servant,

W. L. GRIFFITH.

The Under Secretary of State,
Ottawa, Canada.

SESSIONAL PAPER No. 108a

EVANGELICAL ALLIANCE,

7 ADAM STREET, STRAND,

LONDON, S.W., November 24, 1911.

The RIGHT HON. LORD STRATHCONA, G.C.M.G.,
28 Grosvenor Square, W.

The "Ne Temere" Decree.

MY LORD,—I am directed by my council to forward to you, copies of three resolutions, unanimously adopted by the Great Meeting held in the Queen's Hall, Langham Place, W., on

I am, &c.,

(Sd.) H. M. GOOCH.

THE VATICAN AND MIXED MARRIAGES.

THE "NE TEMERE" DECREE.

Resolutions of the Queen's Hall Meeting, November 15, 1911.

RESOLUTION I.

Resolved.—‘That this meeting of three thousand citizens representative of our National Christianity, protests against the publication in the British Empire of the Decree of the Council of Trent, known as *Ne Temere*, whereby mixed marriages contracted according to the rites of the Protestant Churches and the law of the State, are declared null and void, and British subjects who have openly and honourably entered into such marriages are held up to public reprobation as living in sin, and their children branded as illegitimate; the meeting also repudiates the pretensions of the Church of Rome to regulate the conditions determining the validity of marriages legally solemnized between British subjects in any part of His Majesty's Dominions.’

RESOLUTION II.

Resolved.—‘That His Majesty's Government be requested to take such steps as are necessary to give relief to those suffering from the social consequences that follow the publication in the British Empire of the Decree of the Council of Trent, known as *Ne Temere*, and to protect the civil and religious rights and liberty of all His Majesty's subjects who contract legal marriages; and that copies of this and the foregoing resolutions be forwarded to the Prime Minister, the Secretary of State for the Colonies, the Chief Secretary for Ireland, the High Commissioner for Canada, and the Members of both Houses of His Majesty's Parliament.’

RESOLUTION III.

Resolved.—‘That the Prime Minister be asked to receive a deputation on the subject of the operation of the *Ne Temere* decree in the British Empire; and that the thanks of this meeting be tendered to the Chairman and Council of the Evangelical Alliance (British Organization) for their action in convening this meeting, which, on behalf of the Reformed Churches, promises to give all possible assistance to the Alliance in its further efforts to safeguard the religious rights and liberty of His Majesty's subjects; this meeting also further pledges itself to support a larger gathering of protest in the Royal Albert Hall, if such action be found necessary.’

RE PROPOSED AMENDMENT TO MARRIAGE ACT.

The following questions have been submitted to me:—

- (1) Has the Parliament of Canada legislative competence to enact Bill No. 3 (being an Act to amend the Marriage Act)?
- (2) Has the Parliament of Canada power to validate a marriage which has not been solemnized in accordance with the formalities or before the person prescribed by the law of the Province?
- (3) If the law of any province requires that the marriage of two Catholics in order to be valid must be celebrated before the parish priest, or before a Catholic priest, has the Parliament of Canada power to declare that such marriage although solemnized before some other clergyman or officer shall be valid notwithstanding the law of the province?

In my opinion the answer to each of the above named questions should be, 'No.'

The effect of the amendment to the Marriage Act, R.S.C., c. 105, proposed by Bill No. 3, is that a marriage ceremony performed by a person authorized only to perform certain marriage ceremonies is duly performed notwithstanding that the marriage ceremony in question was outside or beyond the limit of authority of the person who performed it and that such marriage is legal and valid. In other words if the province should authorize a person to perform the marriage ceremony only between two Catholics, and such person should perform the marriage ceremony between two Protestants, the Act in question would make such marriage legal. This legislation appears to me to go beyond the powers of the Dominion. It is true that under the British North America Act, sec. 91, Marriage and Divorce belong to the classes of subjects within the exclusive legislative authority of the Parliament of Canada, but it is equally true that under section 92, the solemnization of marriage in the province is within the exclusive jurisdiction of the Provincial Legislature. It is necessary therefore to harmonize, if possible, these two apparently conflicting powers. This may be said to be a canon of construction adopted by the Judicial Committee of the Privy Council when dealing with federal and provincial rights, although it may also be said to be laid down that if there is a real conflict the rights of the Dominion will prevail. In the matter now under consideration, however, the conflict is in my view only apparent.

In the case of *The Citizens Insurance Company vs. Parsons*, 7 A.C. 96, Sir Montague Smith, in delivering the judgment of the board, says at p. 108:—

“Notwithstanding the endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers it is obvious that in some cases where this apparent conflict exists the legislature could not have intended that the powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Dominion Parliament. Take as one instance the subject, marriage and divorce, contained in the enumeration of subjects in section 91. It is evident that solemnization of marriage would come within the general description, yet solemnization of marriage in the province is enumerated among the classes of subjects in section 92, and no one can doubt, notwithstanding the general language of section 91, that this subject is still within the exclusive authority of the legislatures of the provinces.”

The distinction between “Marriage and Divorce” and “the solemnization of Marriage in the Province” has been commented on in judicial utterances in our own courts. The remarks of the late Mr. Justice Gwynne in the *City of Fredericton vs. The Queen*, 3 S.C.R., 505, at page 568 *et seq* although obiter are instructive. He there says:

SESSIONAL PAPER No. 108a

“Solemnization of marriage, that is to say, the power of regulating the ceremony—the mode of its celebration—is a particular subject expressly placed under the jurisdiction of the Local Legislatures, as a matter which has always been considered to be purely of a local character”

and he points out that all other matters connected with marriage are vested in the Dominion Parliament, e.g.

“the competency of the parties to the contract to enter into it—the effect upon the status of the children if presumed to be de facto entered into by persons not competent by law to enter into it—its obligatory force when entered into—the power of dissolving the tie when entered into—”

and again, the learned judge says:

“Solemnization of marriage is then a matter outside of the term ‘marriage and divorce’ in the 91st section and the result is that the application of the rule (in perfect conformity with the theory of the Act as above defined) leaves the power of legislation as to the form of the ceremony as a purely local matter, under the control of the local legislatures, and places all other matters connected with marriage, including divorce, under the control of the Dominion Parliament.”

This, also, apparently was the view of the law officers of the Crown in England in the communication from Lord Granville, Secretary of State for the Colonies, in a letter to the Governor General, dated the 15th day of January, 1870, appearing in volume 10, No. 9, Sessional Papers, 1877, pp. 339-340, under the group of papers known as No. 89. In this letter he states that the Law Officers are of opinion that “marriage and divorce” reserved by the 91st section to the Parliament of Canada signify:

“all matters relating to the status of marriage between what persons and under what circumstances it was to be created and (if at all) destroyed. There are many reasons of convenience and sense why one law as to the status of marriage should exist throughout the Dominion, which have no application as regards the uniformity of the procedure whereby that status is created or evidenced. Convenience, indeed, and reasons would seem alike in favour of a difference of procedure being allowable in provinces differing so widely in external and internal circumstances as those of which the Dominion is composed, and of permitting the provinces to settle their own procedure for themselves.”

While there does not appear to have actually been a concrete case for the determination by a legal tribunal, drawing the line between the powers of the Dominion Parliament and those of the Provincial Legislatures in this respect, the opinions above cited appear to me to be sound and likely to be followed when such a case does arise.

If then the solemnization of marriage in the province is a matter with which the Dominion Parliament cannot interfere, the question arises what is covered by and comprised in the expression ‘the solemnization of marriage’? “Solemnization” means with ritual ceremony or according to legal forms. It would therefore be within the purview of the Provincial Legislatures to prescribe such ritual or forms as they might deem advisable and it would not appear to be ultra vires of one Provincial Legislature to declare that all marriage ceremonies should be performed by a Catholic priest according to Catholic ritual; for another to declare that all marriage ceremonies should be performed by a Protestant minister according to the ritual of the Church to which he belonged, or for a third legislature to declare that the ceremony should be performed by a lay registrar or justice of the peace according to a form prescribed, and such legislation could not, I think, be overridden by any Act of the Dominion Parliament.

2 GEORGE V., A. 1912

On the other hand the Dominion Parliament can legislate as to the persons between whom marriage is competent; the degree within which marriage shall be prohibited; the causes which may entitle a married person to a divorce,, and with none of these subjects can the province interfere.

I am not dealing in any way with the question of the rules or regulations of any particular church or sect. None of these in themselves can effect the legal solemnization of marriage nor the status of married people, but it is in my view competent for the Provincial Legislature and for that body alone to prescribe how and in what form and by whom marriages shall be solemnized in the province; nor in this opinion has the question of the existing legislation of the provinces in regard to the solemnization of marriage, or marriage itself been considered. It may be that some of this legislation is ultra vires in that it does more than provide for the solemnization of marriages in the province, but considerations such as these do not touch the abstract question as to the right of the Dominion to invade a field set apart for the province.

It may not be out of place to state that in the cases that have been decided in the Province of Quebec the judges, although differing in opinion, have differed only as to the proper construction to be placed upon the code in the sections that provide for the solemnization of marriage, and that there has been no pronouncement so far as I can find as to whether some of these sections are or are not within the powers of the legislature.

(Sd.) I. F. HELLMUTH.

TORONTO, January 16th, 1912.

P.C. 424.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 22nd February, 1912.

The Committee of the Privy Council, on the recommendation of the Minister of Justice, advise that pursuant to section 60 of the Supreme Court Act, the following questions be referred to the Supreme Court of Canada for hearing and consideration, namely,—

1. (a) Has the Parliament of Canada authority to enact in whole or in part, Bill No. 3 of the first session of the Twelfth Parliament of Canada, intituled: "An Act to amend the Marriage Act"?

The Bill provides as follows:—

1. The Marriage Act, chapter 105 of the Revised Statutes, 1906, is amended by adding thereto the following section:—

"3. Every ceremony or form of marriage heretofore or hereafter performed by any person authorized to perform any ceremony of marriage by the laws of the place where it is performed, and duly performed according to such laws, shall everywhere within Canada be deemed to be a valid marriage, notwithstanding any differences in the religious faith of the persons so married and without regard to the religion of the person performing the ceremony.

"(2) The rights and duties, as married people of the respective persons married as aforesaid, and of the children of such marriage, shall be absolute and complete, and no law or canonical decree or custom of or in any province in Canada shall have any force or effect to invalidate or qualify any such marriage or any of the rights of the said persons or their children in any manner whatsoever."

(b) If the provisions of the said Bill are not all within the authority of the Parliament of Canada to enact, which, if any, of the provisions are within such authority?

SESSIONAL PAPER No. 108a

2. Does the law of the Province of Quebec render null and void unless contracted before a Roman Catholic Priest, a marriage that would otherwise be legally binding, which takes place in such province,

(a) Between persons who are both Roman Catholics, or

(b) Between persons one of whom, only, is a Roman Catholic.

3. If either (a) or (b) of the last preceding question is answered in the affirmative, or if both of them are answered in the affirmative, has the Parliament of Canada authority to enact that all such marriages whether,

(a) Heretofore solemnized, or

(b) Hereafter to be solemnized, shall be legal and binding.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

METHODIST PARSONAGE,

VERNON RIVER BRIDGE, P.E.I., December 6, 1911.

RT. HON. R. L. BORDEN, M.P., Premier,
Ottawa.

SIR,—*Montreal Daily Witness* of November 16, leader page 4 *re* "Speaker" so incensed me by its manifest partisanship and unfairness that I replied to it, my reply appears in their issue of December 2, page 16 (correspondence).

For your information and in the most earnest hope that your administration, while I am sure it will be most scrupulously fair to all R. C. subjects of the Empire in the Dominion *will labour successfully* to redress the serious grievances handicaps and burdens under which the Protestant population of Canada has suffered so long; as a British subject English born and for all generations back without any other admixture, and resident $\frac{3}{4}$ ths of my life in the Old Land, I feel *humiliated* both there and here in comparison with Germany, &c., and I am inclined to think that neither Salisbury nor Gladstone would for five minutes have tolerated, what their successors complacently endure of R. C. arrogance and aggression. With great respect and all good wishes, Yours for equal rights to all and privilege to none.

(Sd.) GEORGE ORMAN.

BLIND RIVER, ONT., February 19, 1911.

Right Hon. R. L. BORDEN,
Premier of Canada.

HONOURED SIR,—Enclosed find copy of resolution passed unanimously by the East Algoma Orange County Association at Desbarats, February 6, 1912.

Very respectfully yours,

(Sd.) H. P. HUMPHREYS,
County Master.
ALGOMA EAST.

At our annual county meeting, held at Desbarats on February 6, 1912

Re THE NE TEMERE DECREE.

Which has taken up so much valuable time of our Government as promulgated by the Church of Rome is permitted to continue to disturb the Most Sacred Relation of Life, viz: the Marriage Tie, and to assert itself above the civil law.

2 GEORGE V., A. 1912

This was resolved and carried.

That the Dominion Government immediately assert their right to control the laws of this country, without subjecting themselves to the interference of Rome, by the passing of a federal marriage law, making it a criminal offence for any one to interfere in any marriage that has been lawfully contracted

NIAGARA AND HAMILTON ASSOCIATION OF BAPTIST CHURCHES.

QUEENSTON, ONT., January 12, 1912.

Right Hon. R. L. BORDEN, P.C.,
Premier of Canada,
Ottawa.

DEAR SIR,—In accordance with a resolution passed at the last annual meeting of the above Association, held in Dunnville June, 1911, I enclose herewith a copy of the Minutes, containing the following resolution, which you will find on page 10:—

“This association representing the Baptists of the Counties of Welland, Wentworth, Lincoln and part of Haldimand, enters its protest against the proclamation of the Ne Temere decree by the Papacy in the Dominion of Canada, whereby families are being broken up, parents accused of living in immoral relations, and the children of marriages not performed in accordance with the ecclesiastical conditions of this decree are stigmatized as illegitimate, notwithstanding that the civil conditions imposed by the statutes of our several provinces have been complied with.

“We recognize the right of the Roman Catholic Church to formulate any regulation for determining the conduct of its own membership; but earnestly protest against any such regulation determining the legal status of the marriage state, based upon such ecclesiastical requirements, and further

“We would respectfully urge upon the Dominion Government the enactment of a law by which all marriages in which the civil conditions have been complied with shall be held to have been legally performed, and making it a criminal offence, punishable by fine or imprisonment or both, for any individual to make public a statement that those who have been married are not living in legal, and therefore moral relations, ecclesiastical conditions notwithstanding;

“That a copy of this resolution be forwarded to the Premier of the Dominion, the Minister of Justice, and to the parliamentary representatives of the counties embraced in this association.”

Copies of the above resolution were sent to the late Government, but with the change brought about last September, I now forward copies to yourself, as Premier of Canada, and to the Minister of Justice.

Yours sincerely,

(Sd.) W. L. PALFRAMAN.

SESSIONAL PAPER No. 108a

MINUTES OF THE 92ND ANNUAL MEETING OF THE NIAGORA AND HAMILTON ASSOCIATION OF BAPTIST CHURCHES HELD WITH THE REGULAR BAPTIST CHURCH, DUNNVILLE, ONT., TUESDAY, WEDNESDAY AND THURSDAY, JUNE 6TH, 7TH AND 8TH, 1911.

Moderator—S. GILLIES, Esq., Hamilton.

Clerk—Rev. W. L. PALFRAMAN, Queenston.

“NE TEMERE.”

The following resolution, moved by Rev. H. McDiarmid,, seconded by Rev. Wm. MacGregor, was carried unanimously:

“This Association, representing the Baptists of the counties of Welland, Wentworth, Lincoln and part of Haldimand, enters its protest against the proclamation of the *Ne Temere* decree by the Papacy in the Dominion of Canada, whereby families are being broken up, parents accused of living in immoral relations, and the children of marriages not performed in accordance with the ecclesiastical conditions of this decree are stigmatized as illegitimate, notwithstanding that the civil conditions imposed by the statutes of our several provinces have been complied with.

“We recognize the right of the Roman Catholic to formulate any regulation for determining the conduct of its own membership; but earnestly protest against any such regulation determining the legal status of the marriage state. based upon such ecclesiastical requirements; and further,

“We would respectfully urge upon the Dominion Government the enactment of a law by which all marriages in which the civil conditions have been complied with shall be held to have been legally performed, and making it a criminal offence, punishable by fine or imprisonment or both, for any individual to make public a statement that those who have thus been married are not living in legal, and therefore moral, relations, ecclesiastical conditions notwithstanding.

“That a copy of this resolution be forwarded to the Premier of the Dominion, the Minister of Justice, and to the parliamentary representatives of the counties embraced in this association.

